UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

1ST INTERIORS, INC. Employer and INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL 81 AND ITS FULLY AFFILIATED LOCAL NO. 246 Petitioner	Case 18-RC-17270

DECISION AND DIRECTION OF ELECTION

Petitioner seeks an election in a unit of all full-time and regular part-time apprentices/journey person tapers employed by the Employer at its 1451 Northeast 69th Place, Suite 41, Ankeny, Iowa facility; excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees employed by the Employer. The Employer and Carpenters Local Union No. 106 of the United Brotherhood of Carpenters and Joiners of America, which intervened in this case, agree that this is an appropriate unit. However, the Employer and Intervenor contend that they have a contract covering the Employer's employees employed as tapers, and that this contract bars further processing of this petition. After reviewing the record and relevant Board cases, I conclude that the purported contract between the Employer and Carpenters Local 106 does not bar an election in this case. I also conclude that the Employer's recognition of Carpenters Local 106 does not bar an election. Therefore, I hereby order an election in the unit stipulated as appropriate by the parties.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[1]

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. None of the facts in this matter is in dispute. I will first summarize the evidence regarding the Employer's operation and historical relationship with Petitioner. The second section of this decision will present the facts related to the contract between the Employer and the Intervenor, Carpenters Local 106. The third section will present the facts related to the Employer's recognition of Carpenters Local 106. I will then analyze the Board's principles regarding contract bar and recognition bar. Finally, I will explain my conclusions as set forth above.

[1] The Employer, 1ST Interiors, Inc., is an Iowa corporation with an office and place of business in Ankeny, Iowa, where it is engaged in commercial building construction. During the past calendar year, a representative period, the Employer purchased and received at its Ankeny, Iowa facility goods, materials and supplies valued in excess of $50,000 directly from suppliers located outside the State of Iowa.

THE EMPLOYER'S OPERATION AND HISTORICAL RELATIONSHIP WITH PETITIONER

The Employer is a contractor engaged in commercial interior finish work. In the past, the Employer has had collective bargaining agreements with Petitioner covering tapers (both journeymen and apprentices) in the Employer's employ. The record does not indicate the length of the relationship, but the parties agree that the contracts between the Employer and Petitioner were 8(f) agreements. The most recent agreement expired on April 30, 2004.

The Employer's owner, Jeffrey Dunn, was on the bargaining committee for drywall contractors negotiating with Petitioner for an agreement to succeed the 8(f) contract that expired on April 30. He testified that negotiations for a successor contract continued past the expiration date of the prior contract. He also testified that at the last negotiation session, the contractor group made a final offer that was rejected by Petitioner. As a result, on about May 3, 2004, the Petitioner struck the Employer and other drywall contractors. On May 5 the Employer terminated its relationship with Petitioner.

The group of employees involved in this proceeding are the Employer's tapers. As of May 7, 2004, the Employer employed 17 tapers. While the record is not entirely clear, it appears these tapers are regularly employed by the Employer, and not provided by any hiring hall.

THE CONTRACT BETWEEN THE EMPLOYER AND CARPENTERS LOCAL 106

According to Dunn, at some point in the beginning of May, 2004, the Employer's owner met with a representative of Carpenters Local 106 to discuss the concept of moving the tapers' work over to the carpenters (presumably carpenters union). On May 5, 2004, the Employer and Carpenters Local 106 entered into an agreement covering the tapers. Both the Employer and Carpenters Local 106 acknowledge that this agreement was entered into under Section 8(f) of the

Act. In fact, Dunn testified that at the time he signed the agreement he had no idea how his tapers felt about Carpenters Local 106.

The contract signed on May 5 is part of the record. It consists of one page (plus a signature page). Representatives of both the Employer and Carpenters Local 106 testified that their signatures appear on the document and that they signed the document on May 5. This one-page document states that its terms shall be the same as the agreement between the parties on May 1, 2004 covering carpenter work, and it includes minimum hourly rates for journeyman tapers.

The record is clear that the contract covering carpenter work is a wholly separate agreement covering a different group of employees than the tapers. Thus, the May 5, 2004 agreement covering tapers states that the final terms for its contract shall be the same as for the agreement covering the carpenters, with certain modifications discussed later herein.

According to Carpenters Field Director Bruce Werning, the May 5, 2004 agreement is "a work in progress." That is, the parties' intent when they signed the May 5 agreement was that they would operate under it pending the preparation of "a full blown document." For example, the one-page document does not contain wage rates for tapers (except for agreed-upon minimums for journeyman tapers). Also in evidence is a wage sheet (consisting of two pages) that Carpenters Local 106 prepared for the Employer and faxed to the Employer on about May 12, 2004. This wage sheet contains wage rates and levels of benefit contributions, and provides for a "working assessment" for the tapers. It also breaks down in detail the wage rates and benefit payments for apprentices, depending on hours worked. None of the information contained on the wage sheet is on the one-page document signed on May 5, except for the minimum wage rate and benefit payments for journeyman tapers. According to Werning, the

effect of the agreement dated May 5 is that the Employer is agreeing to apply the carpenter contract to its taper employees, with the modifications that are set forth in the wage sheet.

Werning also made clear during his testimony that there is no signed contract between Carpenters Local 106 and any interior drywall contractors (including 1st Interiors, Inc.) covering carpenter work. Rather, Carpenters Local 106 and the interior drywall contractors have a verbal agreement, with only handshakes as evidence of the agreement. Thus, there is no signed agreement (or initiated agreement for that matter) between the Employer and Carpenters Local 106 covering carpenter work, and the reference in the May 5 contract signed by the Employer and Carpenters Local 106 to an agreement entered into on May 1, 2004, covering carpenter work is a reference to a verbal agreement not yet printed or signed.

THE EMPLOYER'S RECOGNITION OF CARPENTERS LOCAL 106

On May 7, 2004, the Employer and Carpenters Local 106 signed an "Agreement for Voluntary Recognition." A copy of the Agreement is in evidence. It states that the Employer agrees that a majority of tapers have authorized Carpenters Local 106 to represent it in collective bargaining. According to the Agreement, "The Union … has either provided proof of its claim to the Employer or has offered to show proof of its majority support to the Employer, which offer the Employer has declined."

The Employer representative who signed the Agreement for Voluntary Recognition is Dunn. According to his testimony, he went to the offices of Carpenters Local 106 at the behest of its representative Tim Hurley, and on May 7 between 4:30 and 5:00 pm he signed the voluntary recognition agreement. Dunn testified that he did not look at any authorization cards, and in fact did not recall whether Hurley offered to show him the cards. Dunn recalled, however, that Hurley provided a list containing the names of employees of the Employer whom Hurley

contended had signed cards, and in fact, Hurley faxed this list to Dunn prior to their meeting at the offices of Carpenters Local 106 on May 7.

Tim Hurley's testimony with regard to what occurred on May 7 does not differ from Dunn's, except that Hurley stated that he told Dunn that he had the authorization cards with him. Hurley agreed however, that Dunn did not look at the cards.

Signatures from both Dunn and Hurley are on the Agreement for Voluntary Recognition, and both testified that they signed the Agreement on May 7. In evidence is the list of employees Hurley faxed to Dunn on May 7. That list contains the names of 12 employees of the Employer, and next to the names are dates. The dates next to the names are May 5, 6 or 7, 2004. At the top of this list is the heading, "1ST INTERIORS – SIGNED AUTHORIZATION CARDS."

Prior to the hearing in this matter, Carpenters Local 106 filed a motion to dismiss this petition (which was denied by the Acting Regional Director). At the time it filed the motion, Carpenters Local 106 also attached copies of the authorization cards it claimed were signed by employees of the Employer. A review of those copies reveals that a majority of the employees whose names appear on the list described above signed authorization cards designating Carpenters Local 106 as their collective bargaining agent. The cards are dated May 5, 6 or 7, 2004.

THE LAW REGARDING THE ADEQUACY OF THE CONTRACT

In order for an agreement to serve as a bar to an election, it must satisfy certain substantive and formal requirements that have been well established by Board case law. In Appalachian Shale Products Co., 121 NLRB 1160 (1958), the seminal case setting forth these requirements, the Board held that to constitute a bar to an election, an agreement containing substantial terms and conditions of employment sufficient to stabilize the parties' relationship

must be signed by the parties prior to the filing of the petition. The agreement need not be a formal document. Rather, an informal document or series of documents, such as a written proposal and written acceptance, which nonetheless contain substantial terms and conditions of employment, are sufficient, if signed. Seton Medical Center, 317 NLRB 87 (1995); USM Corp., 256 NLRB 996 (1981). It is also immaterial that the contract does not take the form of a single self-contained document. Canon Boiler Works, 304 NLRB 457 (1991); Television Station WVTV, 250 NLRB 198 (1980). It is also clear that if the parties place their initials on the agreement, the initials are sufficient for contract bar purposes in certain circumstances, even though it is understood that the parties will formally execute the contract at a later date. Television Station WVTV, supra; Georgia Purchasing, Inc., 230 NLRB 1174 (1977); The Bendix Corporation, Process Instruments Division, 210 NLRB 1026 (1974). Finally, in representation cases, the Board has consistently limited its inquiry to the four corners of the document or documents alleged to bar an election and has excluded the consideration of extrinsic evidence. United Health Care Services, 326 NLRB 1379 (1998); Union Fish Co., 156 NLRB 187, 191-192 (1965).

THE LAW REGARDING RECOGNITION IN THE CONSTRUCTION INDUSTRY AND RECOGNITION BAR

Recognition in the Construction Industry

In the construction industry, parties may create a bargaining relationship pursuant to either Section 9(a) or 8(f) of the Act. In the absence of evidence to the contrary, the Board presumes that the parties intend their relationship to be governed by Section 8(f), rather than Section 9(a), and imposes the burden of proving the existence of a 9(a) relationship on the party asserting that such a relationship exists. H. Y. Floors & Gameline Painting, 331 NLRB 304

(2000); John Deklewa & Sons, 282 NLRB 1375 (1987), enfd. sub nom. Iron Workers Local 3 v. NLRB, 843 F.2d 770 (3d. Cir. 1988), cert. denied 488 U.S. 889 (1988). To establish voluntary recognition in the construction industry pursuant to Section 9(a), the Board requires evidence that the union (1) unequivocally demanded recognition as the employees' 9(a) representative, and (2) that the Employer unequivocally accepted it as such. H. Y. Floors & Gameline Painting, supra. The Board also requires a contemporaneous showing of majority support by the union at the time 9(a) recognition is granted. Golden West Electric, 307 NLRB 1494, 1495 (1992). However, as to this contemporaneous showing, the Board has held that an employer's acknowledgement of such majority support is sufficient to preclude a challenge to majority status. H. Y. Floors & Gameline Painting, supra; Oklahoma Installation Co., 325 NLRB 741 (1998). Moreover, the Board has held that a challenge to 9(a) status must be made within a 6-month period after the grant of 9(a) recognition. Casale Industries, 311 NLRB 951 (1993).

Recognition Bar

Also important in this case is the Board's application of the recognition bar doctrine. In Sound Contractors, 162 NLRB 364 (1966), the Board concluded that in the context of representation cases an employer's lawful voluntary recognition of a majority union will serve as a bar to a petition challenging the union's representational status for a reasonable period of time following the recognition. Unlike the successorship situation, where employees have already has an opportunity to assess a union's effectiveness, employees in a situation involving voluntary recognition or certification need an opportunity to assess the union's effectiveness in an environment free from any attempts to replace, decertify, or otherwise alter the employer-employee relationship. Landmark International Trucks, Inc. v. NLRB, 699 F.2d 815, 818 (6th Cir. 1983), cited with approval in MV Transportation, 337 NLRB No. 129, slip op. at 2 (2002).

In deciding recognition bar cases, "the Board seeks to balance the competing interests of effectuating employee free choice, while promoting voluntary recognition and protecting the stability of the collective-bargaining relationship." Ford Center for the Performing Arts, 328 NLRB 1 (1999), citing Smith's Food & Drug Centers, 320 NLRB 844, 846 (1996).

However, there is an exception to recognition bar. The exception is that when two rival unions are conducting organizing campaigns for the same group of employees, an employer's recognition of one union that demonstrates majority status will not bar processing a petition for an election filed by the rival union, where the rival union demonstrates a 30 percent showing of interest that predates the employer's recognition. Smith's Food & Drug Centers, supra. It does not appear that the Board's rule as set out in Smith's Food has been applied in the construction industry, although it appears that the Board would do so, as the Board has indicated that unions in the construction industry should not be treated less favorably than those in the non-construction industry, and as the Board has applied other recognition bar principles to the construction industry. See Casale Industries, supra.

CONCLUSIONS

The Agreement Between the Employer and Carpenters Local 106 Does Not Bar Processing This Petition

I conclude that the agreement between the Employer and Carpenters Local 106 does not meet the Board's requirements to serve as a bar to an election for two reasons. First, the agreement in evidence does not identify the totality of the parties' agreement and does not show that contract negotiations were concluded. On the contrary, the record is clear that key provisions involving wages and benefit contributions for apprentice tapers and journeyman tapers (except for minimums for journeyman tapers) are not part of the agreement in evidence.

In fact, it is not until May 12, 2004, that documentation regarding these subjects is exchanged by the Employer and Carpenters Local 106. Thus, the agreement in evidence fails to reflect the parties' full agreement. Seton Medical Center, 317 NLRB 87 (1995). Second, I conclude that most of the terms and conditions for the agreement covering the tapers between the Employer and Carpenters Local 106 are to be set by the carpenters' agreement. However, the record is clear that the carpenters' agreement is a verbal agreement, and there is no evidence that this agreement has yet been reduced to writing. Importantly, the record is also clear that the Employer and Carpenters Local 106 have not signed any document containing the terms of the carpenters' agreement. Thus, because the carpenters' agreement is a verbal agreement, and because the carpenters' agreement is where the parties look for guidance in their day-to-day problems, the May 5, 2004 agreement is not a bar to processing this petition. Artcraft Displays, Inc., 262 NLRB 1233 (1982).

Carpenters Local 106 Demonstrated Majority Status as of May 7, 2004

I find that the Employer's May 7, 2004 agreement to recognize Carpenters Local 106 as the collective-bargaining representative of a majority of its employees employed as tapers constituted an acceptance of Carpenters Local 106 as the 9(a) representative for the unit that is the subject of the instant petition. The Employer clearly acknowledged that Carpenters Local 106 had submitted to the Employer evidence of majority support and that the Employer was satisfied that Carpenters Local 106 represented a majority of its employees. While the Employer representative did not review the authorization cards submitted to him, copies of the cards are in evidence and, in fact, a majority of the tapers employed by the Employer designated Carpenters Local 106 as their collective-bargaining agent on or before May 7, 2004. Therefore, I

conclude that as of May 7, 2004, Carpenters Local 106 was the 9(a) representative of the tapers employed by the Employer. Verkler, Inc., 337 NLRB 128 (2001).

The Employer's May 7, 2004 Recognition Does Not Bar an Election

While I conclude that the Employer's recognition of Carpenters Local 106 established a 9(a) relationship, I nevertheless will order an election in this case in view of the Board's decision in Smith's Food & Drug Centers, supra.

On the same day that the Employer granted 9(a) recognition to Carpenters Local 106, Petitioner filed the instant petition. An administrative investigation of the showing of interest submitted by Petitioner with its petition reveals that Petitioner submitted at least a 30 percent showing of interest that predates May 7, 2004. Therefore, an election is warranted in order to guarantee employees an opportunity to express their desires in a definitive manner. Smith's Food & Drug Centers, supra at 846.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time apprentices/journey person tapers employed by the Employer at its 1451 Northeast 69th Place, Suite 41, Ankeny, Iowa facility; excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees employed by the Employer.

DIRECTION OF ELECTION[2]

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible to vote are all employees in the unit (1) who have been employed for at least two periods of employment cumulatively amounting to 30 days or more in the 12-month period immediately preceding the eligibility date, *or* (2) who have had some employment in the 12-month period and have had at least two periods of employment cumulatively amounting to 45 days or more in the 24-month period immediately preceding the eligibility date, *or* (3) who have had one period of employment of 90 days or more in the 12-month period immediately preceding the eligibility date.[3] Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the

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[2] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **July 7, 2004**.

[3] Daniels Construction Company, Inc., 133 NLRB 264 (1961), as modified by S.K. Whitly & Co., 304 NLRB 776 (1991).

designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[4]

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Carpenters Local Union No. 106 of the United Brotherhood of Carpenters and Joiners of America; by International Union of Painters and Allied Trades District Council 81 and its fully affiliated Local No. 246; or by Neither**.

Signed at Minneapolis, Minnesota, this 23rd day of June 2004.

/s/ Ronald M. Sharp

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Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board
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[4] To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before close of business **June 30, 2004**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.